

CLERK OF COURT
OF MASS.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

2003 OCT 16 P 5:52

IN RE: PHARMACEUTICAL INDUSTRY)
AVERAGE WHOLESALE PRICE)
LITIGATION)

MDL NO. 1456

CIVIL ACTION: 1:01-CV-12257-PBS

Judge Patti B. Saris

THIS DOCUMENT RELATES TO:

State of California, et al. v.)
Abbott Laboratories, et al.,)
CIVIL ACTION NO. 1:03-CV-11226-PBS)

JOINT MOTION FOR ENTRY OF SCHEDULING ORDER

Plaintiffs Ven-A-Care of the Florida Keys, Inc. ("Ven-A-Care") and the State of California (the "State") and Defendants Abbott Laboratories, Inc. ("Abbott") and Wyeth Inc. and Wyeth Pharmaceuticals Inc. (collectively, "Wyeth") respectfully move this Court for entry of the attached [Proposed] Joint Scheduling Order to govern briefing on The State of California's and Relator's Notice of Election to Dismiss Rebate Claims from the Case and Amended Memorandum of Law in Support of Motion to Remand Pursuant to the Court's Ruling of September 18, 2003 (the "Notice of Election & Amended Remand Motion") in the above-captioned action. In support of this joint motion, the parties state as follows:

On July 28, 1998, Ven-A-Care filed an action under the qui tam provisions of the California False Claims Act. The Complaint was filed under seal in the Superior Court of the State of California and was later amended and styled *The State of California ex rel. Ven-A-Care*

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of the Florida Keys, Inc., a Florida Corporation, by and through its principal officers and directors, Zachary T. Bentley and Mark T. Jones v. Abbott Laboratories; Wyeth Pharmaceuticals Inc.; Wyeth Inc.; and [other defendants under seal]. The State intervened and filed a complaint against Abbott and Wyeth on January 7, 2003 (the "Complaint-In-Intervention"). Abbott removed the action to the Central District of California in March 2003 and the case was stayed pending a transfer decision by the Judicial Panel on Multidistrict Litigation ("JPML").

The case was subsequently transferred to this Court by the JPML in June 2003. Following transfer to this Court, plaintiffs filed a motion to remand. On September 18, 2003, this Court denied plaintiffs' motion without prejudice. At the hearing on plaintiffs' motion to remand, this Court ordered the parties to begin briefing defendants' motion to dismiss. Specifically, the Court ordered defendants to file their motion to dismiss the Complaint-In-Intervention within thirty days of September 18, 2003 (October 20, 2003).

Following the September 18, 2003 hearing, however, plaintiffs indicated to defendants that they were planning on dismissing certain claims and filing a renewed motion to remand. On October 16, 2003, plaintiffs filed the Notice of Election & Amended Remand Motion. As a result, the parties agreed that, in the interests of judicial economy and efficiency, defendants would postpone briefing on defendants' motion to dismiss the Complaint-In-Intervention pending this Court's decision on the Notice of Election & Amended Remand Motion. The [Proposed] Joint Scheduling Order reflects this postponement.

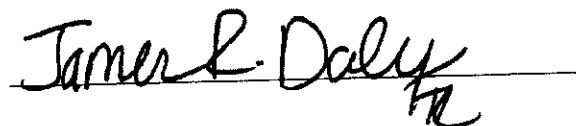
The parties conferred to discuss briefing on the Notice of Election & Amended Remand Motion, as reflected in the attached [Proposed] Joint Scheduling Order. In addition to defendants filing an opposition to the Notice of Election & Amended Remand Motion, the parties agreed that they each would like an opportunity to file a reply. Accordingly, the proposed

schedule affords plaintiffs an opportunity to file a reply and defendants an opportunity to file a sur-reply. The [Proposed] Joint Scheduling Order also proposes that the hearing on the Notice of Election & Amended Remand Motion be set for December 12, 2003. Motions in certain of the other government actions currently pending before this Court are scheduled for hearing on December 12, 2003. Thus, by setting the hearing date for December 12, 2003, the Court will be able to hear all of the motions currently filed in the government actions on the same date, thereby promoting judicial efficiency and economy. Furthermore, a December 12th date will afford each side an opportunity to file a reply brief

Accordingly, the parties respectfully request that this Court enter the attached [Proposed] Joint Scheduling Order. The plaintiffs and Wyeth have authorized counsel for Abbott to sign this joint motion on their behalf.

DATED: October 16, 2003

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "James R. Daly", is written over a horizontal line.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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State of California, et al. v.
Abbott Laboratories, et al.,

CIVIL ACTION NO. 1:03-CV-11226-PBS)
_____)

~~[PROPOSED]~~ JOINT SCHEDULING ORDER

WHEREAS, on July 28, 1998, Ven-A-Care of the Florida Keys, Inc. ("Ven-A-Care") filed an action under the qui tam provisions of the California False Claims Act. The Complaint was filed under seal in the Superior Court of the State of California and was later amended and styled *The State of California ex rel. Ven-A-Care of the Florida Keys, Inc., a Florida Corporation, by and through its principal officers and directors, Zachary T. Bentley and Mark T. Jones v. Abbott Laboratories; Wyeth Pharmaceuticals Inc.; Wyeth Inc.; and [other defendants under seal]*. On January 7, 2003, the State of California intervened in the case and filed a complaint (the "Complaint- In-Intervention") against Abbott Laboratories ("Abbott") and Wyeth Inc. and Wyeth Pharmaceuticals Inc. (collectively, "Wyeth").

WHEREAS, the above-captioned action was removed to federal court in March 2003;

WHEREAS, the above-captioned action was transferred to this Court by the Judicial Panel on Multidistrict Litigation in June 2003;

WHEREAS, on September 18, 2003, this Court denied Plaintiffs motion to remand without prejudice and ordered Defendants to file a motion to dismiss the Complaint-In-Intervention on or before October 20, 2003;

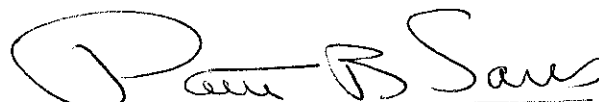
WHEREAS, on October 16, 2003, Plaintiffs filed The State of California's and Relator's Notice of Election to Dismiss Rebate Claims from the Case and Amended Memorandum of Law in Support of Motion to Remand Pursuant to the Court's Ruling of September 18, 2003 (the "Notice of Election & Amended Remand Motion");

WHEREAS, in the interests of judicial economy and efficiency, the parties have agreed to postpone briefing on the motion to dismiss the Complaint-in-Intervention pending this Court's decision on the Notice of Election & Amended Remand Motion.

IT IS HEREBY ORDERED as follows:

1. Defendants shall file an opposition to the Notice of Election & Amended Remand Motion on or before November 14, 2003. The memorandum shall not exceed twenty (20) pages.
2. Plaintiffs shall file a reply by November 24, 2003. The reply shall not exceed ten (10) pages.
3. Defendants shall file a sur-reply by December 4, 2003. The sur-reply shall not exceed ten (10) pages.
4. The hearing on the Notice of Election & Amended Remand Motion shall take place on December 12, 2003 at 2:00 p.m.

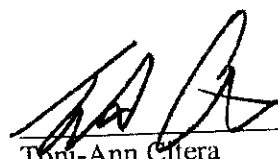
DATED: October 29, 2003


Patti B. Saris
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2003, I, Toni-Ann Citera, an attorney, caused a true and correct copy of the foregoing JOINT MOTION FOR ENTRY OF SCHEDULING ORDER AND [PROPOSED] SCHEDULING ORDER to be served on all counsel of record, via VERILAW, pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.

By:



Toni-Ann Citera
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